



MEMORANDUM

TO: Superintendents and Directors of Special Education

FROM: Dr. Dawn McGrath, Coordinator of Special Education

DATE: February 5, 2010

SUBJECT: Maintenance of Effort (MOE) for Special Education

As put forth in IDEA, amounts provided to a Local Education Agency (LEA) under Part B of the Act may be used only to pay the excess costs of providing special education and related services to children with disabilities. Excess costs are those costs for the education of an elementary school or secondary school student with a disability that are in excess of the average annual per student expenditure in an LEA during the preceding school year for an elementary school or secondary school student, as may be appropriate. An LEA must spend at least the average annual per student expenditure on the education of an elementary school or secondary school child with a disability before funds under Part B of the Act are used to pay the excess costs of providing special education and related services. Excess cost may not include capital outlay or debt service. See IDEA Appendix A at: <http://idea.ed.gov/download/finalregulations.pdf> (46813).

Apart from specific exceptions articulated later in this document, the funds provided to an LEA under Part B of IDEA must not be used to reduce the level of expenditures for the education of children with disabilities made by the LEA from state/local funds below the level of those expenditures for the preceding fiscal year. The total amount of state/local funds used for expenditures for special education is called Maintenance of Effort (MOE). Reference IDEA § 300.203 at: <http://idea.ed.gov/download/finalregulations.pdf> (46780, 46817). The following communication contains answers to questions received by our office regarding MOE. *For the purpose of this guidance, the term LEA means school corporations and charter schools.*

Who is responsible for keeping track of MOE? Each LEA must monitor its use of state and local funds to be sure that the expenditures for the education of children with disabilities meet or exceed the expenses of the previous year.

Why is MOE an important topic this year? For any fiscal year for which the allocation received by an LEA under § 300.705 exceeds the amount the LEA received for the previous fiscal year, the LEA may reduce the level of expenditures otherwise required by § 300.203 (a) by not more than 50 percent of the amount of that excess. For this year, the increase represented by granted ARRA funds, divided in half, equals the money that can be moved from the state/local MOE to become a federal grant expenses. This new MOE is now the MOE that must be maintained in subsequent years. See § 300.205 for more information.

Which LEAs can take advantage of a reduction in MOE? For LEAs that are not required to use their 15% on Coordinated Early Intervening Services (CEIS), have not had audit findings in the past fiscal year, have not been cited for failing to submit timely and accurate data, and have not been determined to have any issues of uncorrected noncompliance, a reduction of MOE is an option.

How is MOE calculated? Each LEA is to figure its MOE based on the requirements under **§ 300.203**, using one of the allowed methods. The LEA may consider the total or per capita amount from either local funds only or from the combination of state and local funds. The LEA may not include special education expenses that were paid for with federal funds when calculating MOE. The method that is employed must be used consistently to compare from year to year.

What are the exceptions? An LEA may reduce the level of expenditures by the LEA below the level of those expenditures for the preceding fiscal year if the reduction is attributable to any of the following:

- (a) The voluntary departure, by retirement or otherwise, of special education or related service personnel
- (b) A decrease in the enrollment of children with disabilities
- (c) The termination of the obligation of the agency to provide an exceptionally costly program of special education to a particular child

Please reference **§ 300.204** for more details on these exceptions.

How is MOE monitored? It is a requirement that the MOE of each LEA is reported on grant applications. Because reduction of MOE is disallowed for some LEAs, the MOE must be reported at the LEA level, not the special education cooperative level. The State will monitor grant reports, conduct desk audits, and contract for onsite monitoring which will include verification of maintenance of effort.

What happens if an LEA fails to maintain this MOE in subsequent years? Consequences could include repayment penalties from the general fund and/or denial of subsequent Part B grants. Therefore, a reduction of effort is a process that should only be done with prudence and a full understanding of the entire picture.

What is a “funding cliff” and what can I do about it? LEAs considering reducing MOE should be cognizant of the eventuality that federal stimulus dollars will run out. However, the requirement to provide FAPE to students with disabilities will continue to be an expectation.

How does the elimination of a separate allocation for early childhood affect MOE calculations? The money allocated for early childhood separately last year and in combination with the general allocation this year are both examples of state fiscal effort spent on special education which would count in the LEA’s MOE. It does not matter that the state preschool money was once distributed separately. Both cases are considered state/local effort in contrast to federal grants. This should not be confused with Part B Section 619 grants, which are not included in the MOE calculation since these are federal dollars.

What do the terms “supplement” and “supplant” have to do with this process? Federal dollars are granted to supplement the local investments already made in special education. Supplanting means that federal dollars are used in place of what had once been a local expense. Supplanting is generally not allowed as it would represent a reduction in MOE. Per ARRA guidance, if an LEA maintains fiscal effort, it is in compliance.

May I complete a grant modification to request permission to supplant? No. Grant modification requests only address the intended use of the federal dollars and do not reveal local MOE information. The state will not have a role in granting permission to supplant through grant modifications. If the LEA meets the MOE, then there is no issue of concern related to supplanting.

If a position was once paid out of state/local MOE and is now paid for out of federal dollars, is this supplanting? Not necessarily. At one time, supplementing versus supplanting determinations included consideration of units of Full Time Equivalency (FTE's). Now it is a simple calculation of MOE. If the LEA maintains its total or per capita expenses, it does not matter exactly which FTEs are paid from what fund.

What if our LEA belongs to a special education cooperative that reported our MOE as an aggregate? You and your cooperative will need to prepare to report MOE at the LEA level historically and moving forward.

A calculator and other helpful information related to this regulation can be found at:

<http://www.northcentralrrc.org/calculators/MOE%20EIS%20Calc%20v1.swf>

If you have additional questions, please contact Michael Craciunoiu at craciuno@doe.in.gov or 317-232-9161.